of the call-up for 10 per cent of the share capital applied for. The allotments on this third call would, in my view, only be made on December 31, 1978 as the time specified for payment by the directors in their resolution of November 2, 1978, and the right of members to be put on the register in respect of the shares allotted would only accrue on or after that date. If the shares were to be issued as and when payment therefor was received from individual members they would not rank *pari passu* and might well create disparity in respect of the rights of members *inter se*.

To the extent to which money is paid in advance on calls, the shareholder is a creditor of the company (*Lock* v. *Queensland Investment and Land Mortgage Co.*[1] (at p. 407 *per* Kay L.J.; affd. [1896] A.C. 461)), but he is not an ordinary creditor, for he cannot demand repayment of the money so paid, and the company cannot repay it unless the articles so provide (*ibid.*). The legal effect of an allotment, which is an appropriation to a person of a certain number of shares but not necessarily of any specific shares, depends on circumstances, for it may be an offer of shares to the allottee or an acceptance of an application for shares by him, but an allotment of itself does not necessarily create the status of membership, even when the contract to take the shares is complete (*Spitzel* v. *Chinese Corporation Limited*[2]). A resolution to allot shares is not necessarily the issue of them, as the term 'issue' would appear to mean allotment followed by registration or possibly by some other act, distinct from allotment, whereby the title of the allottee becomes complete (*Clarke's Case*[3]).

Section 54 of the Companies Act provides for a return as to allotments, and subsection (1) thereof enacts that where a company makes any allotment of its shares it shall within one month thereafter lodge with the Registrar of Companies a return of the allotments specifying the particulars therein prescribed. The allotment made on the third call in this case was not only to the plaintiffs but to all the other shareholders as well. Section 54 prescribes one return of all the allotments made when a company makes an allotment of its shares. The return of the allotment is to be made within one month thereafter and if there is to be registration of the allotment made to him every time any member pays for the shares to be allotted to him before the date specified in the directors' resolution, I cannot see how there can be compliance with the provisions of section 54 unless returns are submitted every time a payment is made on pain of the default penalty provided by subsection (7) of that section. It would accordingly seem clear to me that the allotments to all the shareholders on the third call will be made only on December 31, 1978 and no right can accrue before that date for the plaintiffs or any other shareholder for that matter to demand as of right that they be entered on the register of members immediately upon payment in respect of the shares paid for or that they be issued with share certificates forthwith in view of the specific provisions of sections 54 and 107 of the Companies Act.

In the circumstances and in view of the law and statutory provisions I have discussed I cannot see that the plaintiffs have the right or are entitled to demand as of right that they be entered on the register of members in respect of the shares they paid for on the third call by the company or that they be issued the share certificates therefor immediately on payment being made. If they are not so entitled there is no right to be protected and they cannot therefore claim relief by way of the injunction sought, and consequentially the matter of *mala fides* allegedly attributed by the plaintiffs to the other three directors of the company does not arise for consideration.

I accordingly dismissed the application with costs.

I have already indicated that the primary purpose of the application before me was to stop the Extraordinary General Meeting scheduled for December 2, 1978 or any other general meetings until the plaintiffs were registered in respect of the shares paid for by them on the third call and, in any event, the plaintiffs' grievance would terminate on December 31, 1978 when the allotment to all the shareholders on the third call would be complete and finalised. On December 11, 1978, however, the plaintiffs filed a notice of appeal against my decision dismissing the application which in the circumstances I can only consider an exercise in futility as I cannot see what effective order or relief they could expect to obtain on appeal in respect of this application, assuming for a moment they succeed in the appeal, as the *raison d'etre* and the very purpose of the application would have been long lost and spent by the time the appeal is heard. But then the plaintiffs who are no doubt properly advised perhaps best know what else they can hope to achieve as a result apart from a *brutum fulmen* at the most if at all.

Claim dismissed.

Solicitors: *Concisom & Clark; Kean Chye & Sivalingam.*

RE APPLICATION BY HAMID BIN HASSAN; HAMID BIN HASSAN v. RETURNING OFFICER, KARAK & ORS.

[O.C.J. (Vohrah J.) January 8, 1979]

[Raub — Originating Motion No. 1 of 1979]

Election — Application to quash decision of Returning Officer — Mandamus to uphold objections — Ex parte application — Senior Federal Counsel allowed to appear as amicus curiae — Discretion of court — Remedies given by election legislation not exhausted — Elections (Conduct of Elections) Regulations, 1959, reg. 7 — Election Offences Act, 1954, s. 32(b).

Administrative Law — Application for certiorari to quash decisions of Returning Officer in election — Mandamus to uphold objections made — Discretion of court — Remedies given by election legislation not exhausted — Application dismissed.

In this case the applicant applied (a) for an order of *certiorari* to quash the decision of the Returning Officer overruling the objections to the nomination of certain candidates at an election (b) for an order of *mandamus* to uphold the objections. The applicant had not exhausted his remedies under the Election Offences Act, 1954 for the avoidance of the election in an election petition.

Held: it was not open to the applicant to pursue the matter by seeking the issue of prerogative orders when he had not exhausted the remedies specifically provided by the election legislation.

Case referred to:-

(1) *N.P. Ponnuswami* v. *Returning Officer, Namakkal* A.I.R. 1952 S.C. 69.

ORIGINATING MOTION.

Lim Soh Wah (*Miss S. Sharma* with him) for the applicant.

Lim Beng Choon, Senior Federal Counsel, *amicus curiae.*

Vohrah J.: This was an application by the applicant by way of originating motion for: —

(i) leave to apply for an Order of *Certiorari* to remove into this court and quash the decision of the first respondent overruling the objections to the nomination papers of three candidates, namely, Chan Tan Chuen, Ahmad bin Hussin and Syed Nor Adnan;

(ii) leave to apply for an Order of *Mandamus* against the first respondent directing him to uphold the objections raised by the applicant to the nomination papers of the said three candidates and disqualify them from contesting in the constituency of N21 Karak for the Legislative Assembly;

(iii) all necessary and consequential directions; and

(iv) all proceedings pursuant to the decision be stayed until the hearing of the motion herein or further order.

The application was supported by two affidavits of the applicant, one sworn on July 4, 1978 and the further affidavit on July 5, 1978. As disclosed by the affidavits the objection to the nomination papers of Chan Tan Chuen and of Syed Nor Adnan was made on the ground that the said papers did not disclose the name of the witness who attested the candidate's signature. The objection to the nomination papers of Ahmad bin Hussin was on the ground that those papers did not disclose the name of the witness to his consent and that it was not apparent from them if the candidate was standing for and/or consented to standing for the Dewan Rakyat or the Legislative Assembly. The applicant contended that his objections in respect of these three candidates were "no mean objections and were substantial in nature" and as the candidates were unable to properly fill their nomination papers and could overlook to supply important information required to be disclosed and exhibited by them on these papers they could not, therefore, adequately look after and represent the interests of the applicant in matters of State in the applicant's constituency. The main point taken by the applicant's counsel with regard to the decision of the first respondent on the objection against the nomination papers of Chan Tan Chuen was the fact that it was based, according to the record, upon the advice of the Attorney-General's Chambers so that in effect it was not the decision of the first respondent at all. The actual grounds upon which the relief sought was based were enumerated in the statement filed by the applicant's solicitors who called in aid Order 59 rule 3(2) of the English Rules of the Supreme Court, 1883 by virtue of Order 72 rule 2 of our Rules of the Supreme Court, 1957.

The application was *ex parte* but at the very outset of the proceedings, Mr. Lim Beng Choon, Senior Federal Counsel, who had apparently come to court prepared to intervene in this case, applied to be heard. Counsel for the applicant objected to Senior Federal Counsel's intervention at this stage on the ground that the application was *ex parte*, that there was nothing to show that the respondents in the case wished to be represented by Senior Federal Counsel and that there was no statutory authority for him to so represent. It was, however, conceded that the Senior Federal Counsel could appear as *amicus curiae* if invited by the court. Mr. Lim Beng Choon, on the other hand, argued that as the application involved a matter relating to the executive duty of the Government to carry out elections and, in any event, involved a matter of public interest, the Attorney-General had a right to assist the court as *amicus curiae*. Although the respondents had not been served with the notice of motion, the representative of the Attorney-General had notice of it and was in court to represent the interests of the respondents and I could see no objection to his being heard. I accordingly allowed him to appear in the proceedings as *amicus curiae.*

The law is clear that the court has an inherent supervisory jurisdiction over the exercise of administrative and quasi-judicial powers and that in the exercise of this jurisdiction it has the power to issue the prerogative writs to check excess or abuse of powers. The issue of these writs cannot be required as of right; it is entirely a matter for the discretion of the court. The point I had to consider was whether at that stage I should exercise my discretion to grant leave to the applicant to apply for the Orders of *Certiorari* and *Mandamus* as prayed for.

Counsel for the applicant drew the court's attention to Regulation 7 of the Elections (Conduct of Elections) Regulations, 1959 upon which the applicant founded his right to bring the application. This regulation reads as follows: —

"7.(1) Objection may be made to a nomination paper by any person whose name appears in the electoral rolls for the constituency and by any candidate for the constituency on all or any of the following grounds but on no other ground, namely —

(a) that the description of the candidate is insufficient to identify that candidate;

(b) that the nomination paper does not comply with or was not delivered in accordance with these Regulations;

(c) that it is apparent from the contents of the nomination paper that the candidate is not capable of being elected a member of the Dewan Rakyat or a State Legislative Assembly;

(d) that regulation 5(1) have (sic) not been observed;

(e) that the candidate is disqualified from being a member under the provisions of the Constitution of Malaysia in the case of an election to the Dewan Rakyat or of the Constitution of the State concerned in the case of an election to a State Legislative Assembly.

(2) No objection to a nomination paper shall be allowed unless it is made to the returning officer between eleven o'clock in the forenoon and twelve thirty o'clock in the afternoon on the day of nomination.

(3) Every objection shall be in writing signed by the objector and shall specify the ground of objection. The returning officer may himself lodge an objection on any of the grounds set out in paragraph (1).

(4) The returning officer shall with the least possible delay after twelve thirty o'clock in the afternoon on the day of nomination decide on the validity of every objection and inform the candidate concerned or his proposer or seconder named in the nomination paper provided for in regulation 4(2) of his decision and the grounds thereof.

(5) The decision of the returning officer shall be final and conclusive for the purposes of the election in respect of which the proceedings are being held, and shall not be called in question in any court:

Provided that any person aggrieved by the decision of the returning officer may present an election petition in respect thereof on the grounds set out in section 32(b) of the Election Offences Act, 1954, and the provisions of the said Act shall take effect accordingly."

It was contended for the applicant that paragraph (1) in giving him the right to object to a nomination paper also gave him the right to make the application. It was also contended for the applicant that in overruling and dismissing the objections of the applicant "without even calling upon [the candidates] for an explanation of [the applicant's] objections or rendering a clarification or clarifying [the applicant's] objections" the first respondent acted arbitrarily and with little or no regard for the regulations. It was clear from the record that in respect of each of the objections taken by the applicant the first respondent did make his decision and did give his reasons for so doing albeit in very brief form. In my view the first respondent did in fact perform his duty under paragraph (4).

With regard to the allegation that the first respondent had made no decision of his own but had in fact substituted that of the Attorney-General's Chambers, I could find nothing in the words "atas nasihat daripada Jabatan Peguam Negara" to indicate that this was in fact so. I was of the opinion that this application was entirely misconceived. In any case I considered that paragraph (5) already provided a perfectly adequate machinery to meet any genuine grievances of the nature of those put forward by the applicant. This was very clear from the reference in the proviso to that paragraph to section 32(b) of the Election Offences Act, 1954 for the avoidance of an election in an election petition. It seemed to me that if an adequate machinery is so provided by the law then an aggrieved party must avail himself of that machinery. My opinion was fortified by what was said by Fazl Ali J. in the Indian election case of *N.P. Ponnuswami* v. *Returning Officer, Namakkal,*[1] at page 69 as follows: —

"It is now well-recognized that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes J. in *Wolverhampton New Water Works Co.* v. *Hawkesford,* (1859) 6 C.B. (N.S.) 336, at p. 356 in the following passage:

'There are three classes of cases in which a liability may be established founded upon statute. One is, where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law; there, unless the statute contains words which expressly or by necessary implication exclude the common law remedy, the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the statute gives the right to sue merely, but provides no particular form of remedy: there, the party can only proceed by action at common law. But there is a third class, viz., where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it.... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course, applicable to cases of the second class. The form given by the statute must be adopted and adhered to.'

The rule laid down in this passage was approved by the House of Lords in *Nevile* v. *London Express Newspaper Ltd.* [1919] A.C. 368 and has been reaffirmed by the Privy Council in *Attorney-General of Trinidad and Tabago* v. *Gordon Grant & Co.,* [1935] A.C. 532 and *Secretary of State* v. *Mask & Co.,* 44 Cal. W.N. 709; and it has also been held to be equally applicable to enforcement of rights (see *Hurdutrai* v. *Off. Assignee of Calcutta,* 52 Cal. W.N. 343, at p. 349). That being so, I think it will be a fair inference from the provisions of the Representation of the People Act to state that the Act provides for only one remedy, that remedy being by an election petition to be presented after the election is over, and there is no remedy provided at any intermediate stage."

I agreed entirely with the opinion of the learned judge expressed in this case and was of the view that it was not open to the applicant to pursue this matter by seeking the issue of a prerogative writ when he had not exhausted the remedies specifically provided by our election legislation. Any other view would open the floodgates to a positive deluge of similar applications attempting to bypass the machinery provided by the election law.

I accordingly dismissed the application for leave.

Application dismissed.

Solicitors: *Syarikat Lim Soh Wah.*

DATUK PATINGGI ABDUL RAHMAN YA'KUB v. ABANG MOHAMMAD BIN ABANG ANDING

[O.C.J. (Seah J.) December 12, 1978, January 16, 1979 & February 10, 1979]

[Kuching — Civil Suit No. K. 63 of 1978]

Defamation — Libel — Letters written by defendants containing matters libellous to plaintiff's office as Chief Minister and discrediting his reputation — Suit uncontested — Damages — Principles in assessing.

The plaintiff, the Chief Minister of Sarawak was granted interlocutory judgment in default of appearance on May 19, 1978 against the defendant, an assistant to a political secretary of the plaintiff. The plaintiff applied by motion to assess the amount of damages to be recovered from the defendants.

The plaintiff claimed that the defendant had, in a letter dated January 11, 1978 addressed to the Prime Minister of Malaysia, Datuk Hussein Onn stated that "the plaintiff was evilly opposed to the Prime Minister and the Barisan Nasional and that the plaintiff's policy was to take Sarawak out of the Federation of Malaysia" (The plaintiff was a member and President of a party, Pesaka Bumiputera Bersatu which in turn was a member of the Barisan Nasional).

In another letter of December 14, 1977 addressed to Abang Abu Bakar bin Datu Bandar Abang Haji Mustapha, Yang di-Pertua, Dewan Undangan Negeri, Sarawak, the defendant indicated that "the plaintiff's ideas were racialist, that he viewed political parties in racialist terms and that he viewed his own party as a Melanau party and that anyone who joined it would simply be made use of for the benefit only of the Melanaus". As a result of the said publications the plaintiff claimed that he had been seriously